

Application No. 09/939,412
Amendment dated January 6, 2004
Reply to Office Action of September 10, 2003

REMARKS

Claims 1-7 and 13-42 are pending in the application. Claims 8-12 are canceled. Claims 17-29 are withdrawn from consideration. Claims 1-5 and 13-16 are allowed. Claims 6, 7 and 30-40 are rejected. New Claims 41 and 42 are added by the current amendment.

Claim Objections

Applicants have amended Claims 31 and 40 as suggested by the Examiner.

Claim Rejections - 35 U.S.C. §102

The Examiner rejected Claim 6 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 3,716,050 (hereinafter "Johnston '050"). Applicants have amended Claim 6 and respectfully submit that Claim 6, as amended, is patentable over the cited art.

Claim 6, as amended, calls for a bone plate comprising, *inter alia*, a plate portion and a blade portion extending from one another at an angle and connected to one another at a bend, the blade portion including a blade end opposite the angle, the blade end having a blade edge. Johnston '050 does not disclose or suggest a bone plate having a blade portion with a blade end having a blade edge. The claimed blade edge facilitates insertion of the blade portion of the bone plate called for in Claim 6 into a bone. The bone plate of Johnston '050 includes a blade portion which does not include the claimed blade edge. The blade portion of Johnston '050 rests on the top surface of the bone and is not inserted into the bone. Because Johnston '050 does not disclose or suggest a blade end having a blade edge as called for in Claim 6, as amended, Applicants respectfully request withdrawal of the 35 U.S.C. §102(b) rejection of this claim.

The Examiner rejected Claims 30-40 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,429,641 (hereinafter "Gotfried '641"). In rejecting Claims 30-40, the Examiner argued that Gotfried '641 disclosed an insertion guide member 47 detachably securable to the plate portion of a bone plate and a screw guide 43 detachably securable to the insertion guide member 47 in alignment with one of the plurality of holes in the plate portion of the bone plate.

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Independent Claim 30 calls for a kit including, *inter alia*, a bone plate, an insertion guide member detachably securable to the bone plate, and a screw guide detachably securable to the insertion guide member. Applicants respectfully submit that Gotfried '641 does not disclose or suggest a kit as called for in Claim 30 and including an insertion guide member detachably securable to a bone plate, and a screw guide detachably securable to the insertion guide member. In rejecting Claims 30-40, the Examiner identified insertion guide member 47 and screw guide 43 of Gotfried '641. Applicants respectfully submit that numbered items 47 and 43 of Gotfried '641 do not comprise the claimed insertion guide member and screw guide of independent Claim 30.

Item 47 of Gotfried '641 denotes one of a series of nested tubes forming screwdriver V illustrated in Figure 17. Similarly, reference numeral 43 of Gotfried '641 denotes another of the nested tubes forming screwdriver V illustrated in Figure 17. Screwdriver V is formed of, *inter alia*, concentrically aligned shafts 43 and 47 and is selectively secured to a screw 4 for operably positioning the screw through the bone plate and into the bone. Neither item 47 nor item 43 comprises an insertion guide member detachably securable to a bone plate as called for in Independent Claim 30. Similarly, neither item 47 nor item 43 of Gotfried '641 comprises a screw guide detachably securable to an insertion guide member as called for in Independent Claim 30.

Applicants respectfully submit that Gotfried '641 does not disclose or suggest an insertion guide member detachably securable to a bone plate and a screw guide detachably securable to the insertion guide member as called for in Independent Claim 30. Therefore, Applicants respectfully request withdrawal of the 35 U.S.C. §102(b) rejection of Independent Claim 30 and dependent Claims 31-35 depending therefrom.

Independent Claim 36 calls for a kit comprising, *inter alia*, a bone plate, and an insertion guide member detachably securable to the bone plate and having at least one screw guide member integral therewith. As indicated above with respect to Independent Claim 30, Gotfried '641 does not disclose or suggest an insertion guide member detachably securable to a bone

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plate. Therefore, Applicants respectfully request withdrawal of the 35 U.S.C. §102(b) rejection of Independent Claim 36 and Claims 37-40 depending therefrom.

Claim Rejections - 35 U.S.C. §103

Responsive to the Examiner's 35 U.S.C. §103 rejection of dependent Claim 7 as being unpatentable over Johnston '050, Applicants respectfully submit that Johnston '050 does not disclose or suggest a bone plate having a blade portion with a blade end having a blade edge as indicated above with respect to Claim 6 from which Claim 7 depends. Therefore, Applicants respectfully request withdrawal of the 35 U.S.C. §103 rejection of Claim 7.

Allowable Subject Matter

Applicants appreciate the Examiner's indication of allowable subject matter in Claims 1-5 and 13-16.

New Claims

Applicants have added new Independent Claim 41 and Claim 42 depending therefrom. New Independent Claim 41 calls for a bone plate comprising, *inter alia*, a plate portion and a blade portion extending from one another at an angle and connected to one another at a bend, the blade portion including insertion means for facilitating insertion of the blade portion into a bone, the bend having a radius defined intermediate the plate portion and the blade portion, the radius dimension such that with the plate portion resting against an outer surface of the bone and the blade portion extending into the bone, the radius fits closely adjacent the outside surface of the bone. Applicants respectfully submit that such a bone plate including means for facilitating insertion of the blade portion into a bone together with a radius defined intermediate a plate portion and a blade portion, the radius dimension such that with the plate portion resting against an outer surface of the bone and the blade portion extending into the bone, the radius fits closely adjacent the outside surface of the bone as called for in new Independent Claim 41 is not disclosed or suggested in the prior art and therefore new Independent Claim 41 and dependent Claim 42 depending therefrom are in condition for allowance.

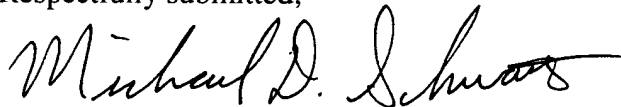
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It is believed that the above represents a complete response to the Office Action and reconsideration is requested. Specifically, Applicants respectfully submit that the current application is in condition for allowance and such action is earnestly solicited.

In the event Applicant has overlooked the need for an extension of time or payment of fee, Applicant hereby petitions therefor and authorizes that any charges be made to Deposit Account No. 02-0385, BAKER & DANIELS.

If any questions concerning this application should arise, the Examiner is encouraged to telephone the undersigned at 260/424-8000.

Respectfully submitted,



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MS/pas
Enclosure(s):
Postcard

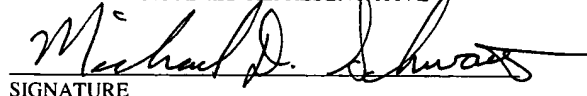
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SIGNATURE

January 6, 2003

DATE